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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,091	02/18/2004	Andrew M. Labout	2035	4780

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TIMOTHY J MARTIN, PC  
9250 W 5TH AVENUE  
SUITE 200  
LAKEWOOD, CO 80226

EXAMINER

BONCK, RODNEY H

ART UNIT PAPER NUMBER

3681

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/782,091

Applicant(s)

LABOUT, ANDREW M.

Examiner

Rodney H. Bonck

Art Unit

3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-33 is/are allowed.
- 6) ☒ Claim(s) 1-4, 13-15, 21, 22 and 34-44 is/are rejected.
- 7) ☒ Claim(s) 5-12 and 16-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

The following is a first action on the merits of application Serial No.10/782,091, filed February 18, 2004.

#### *Drawings*

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: **158** (mentioned on the last line of page 19).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "**156**" has been used to designate both a floorboard and an end portion. It appears that the end portion should be designated **158**.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities:

In line 20 of page 1, "a" should be – A --.

In line 1 of page 2, "break" apparently should be – brake --.

In line 7 of page 17, "82" should be – 80 --.

Appropriate correction is required.

***Claim Objections***

Claim 10 is objected to because of the following informalities:

In line 1 of claim 10, "a " should be – an --.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 13, 22, and 34-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger('899) in view of Kupper et al.('734) and Hutchison('698). The Berger device is a clutch control system for latching a clutch in the disengaged position "when the gearbox is not conditioned for torque delivery." Berger is concerned with the

situation where the transmission is in neutral. The Kupper et al. device discloses a control system wherein the clutch is maintained in disengaged condition if the operator attempts to shift into an inappropriate gear, *i.e.*, one that would cause engine overspeed. Hutchison discloses an alarm system that warns the vehicle operator that reengagement of the vehicle clutch, after a shift to an inappropriate gear, would cause engine overspeed. Hutchison provides a gearshift sensor 114, a monitor device 110, 112, and a controller 118 to determine whether reengagement of the clutch would cause engine overspeed. In view of Kupper et al. and Hutchison it would have been obvious to one having ordinary skill in this art to modify Berger to prevent clutch reengagement if an inappropriate gear is selected by the vehicle operator, the motivation being to prevent engine overspeed. The monitor device senses transmission input speed in Hutchison, as claimed here, and the latch mechanism in Berger blocks movement of a reciprocating clutch pedal. The gearshift sensor in Kupper et al. senses different gearshift positions. The Hutchison device teaches providing an alarm. Using the Berger device as modified in view of Kupper et al. and Hutchison would inherently involve the steps of determining a maximum permissible speed for a particular gear, monitoring actual speed and selected gear, and permitting or preventing clutch engagement, as appropriate for the conditions. The controller in Hutchison would inherently include memory for storing the necessary data for determining whether an appropriate gear has been selected for the actual speed. Claimed structure that differs from that taught by Berger as modified in view of Kupper et al. and Hutchison would not carry patentable weight in claims to the method.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berger('899) in view of Kupper et al.('734) and Hutchison('698) as applied to claim 2 above, and further in view of Price et al.('922). The combination taught by Berger('899) in view of Kupper et al.('734) and Hutchison('698) does not specify that the monitor device includes a magnet and Hall-effect sensor. Hall-effect sensors are well known in this art for sensing speed of a rotating element. The Price et al. device discloses one example. It would have been obvious to use a Hall-effect sensor in the device taught by Berger('899) in view of Kupper et al.('734) and Hutchison('698), the motivation being to determine the speed of the vehicle or of an element that has a known relation to vehicle speed.

Claims 14, 15, and 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger('899) in view of Kupper et al.('734) and Hutchison('698) as applied to claims 1, 2, 4, 13, 22, and 34-40 above, and further in view of Danielsson et al.(US 2004/0011152 A1). The combination taught by Berger('899) in view of Kupper et al.('734) and Hutchison('698) does not specify the type of sensor used to determine the gearshift position. The Danielsson et al. device discloses a gearshift lever sensor including a gearshift follower 7 and a position detector 10, which is an optical encoder having a light sensor 9 detecting a light beam from a light source incorporated in follower 7. It would have been obvious to use a known detector, such as that of Danielsson et al., for the gear position sensor in the combination taught by Berger('899) in view of Kupper et al.('734) and Hutchison('698), the motivation being to provide an

indication of the gear selected, in order to determine whether the vehicle operator is about to engage an improper gear for that speed. In determining the selected gear in the combination taught by the references, the gearshift plane and level within the gearshift plane are inherently at least indirectly determined.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berger('899) in view of Kupper et al.('734) and Hutchison('698) as applied to claim 1 above, and further in view of Tury('769). The combination taught by Berger('899) in view of Kupper et al.('734) and Hutchison('698) does not specify that an analog-to-digital converter is employed to receive the gear state and speed signals. Tury discloses a control arrangement wherein a speed sensor provides signals to an analog-to-digital converter 212 for processing by the control logic unit. It would have been obvious in the combination taught by Berger('899) in view of Kupper et al.('734) and Hutchison('698) to provide an analog-to-digital converter, the motivation being to convert any analog signal from a sensor, such as a speed sensor, to digital form for processing.

#### ***Allowable Subject Matter***

Claims 5-12 and 16-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 23-33 are allowed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bellanger('426) provides an arrangement to disengage a clutch to protect against damage. Lemp et al.('632), Uher('229), and Bellfy('113) show latches for clutch pedals. Jones et al.('211) warns the driver if there is clutch re-engagement under "abusive conditions". Wagner et al.('108) provides overspeed protection.

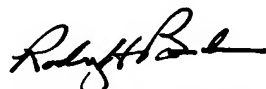
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney H. Bonck whose telephone number is (571) 272-7089. The examiner can normally be reached on Monday-Friday 7:00AM - 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on (571) 272-7095. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 3681

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Rodney H. Bonck  
Primary Examiner  
Art Unit 3681

rhb  
May 17, 2005